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EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 31st July, 2009:—

BILL NO. LX OF 2009

A Bill further to amend the Life Insurance Corporation Act, 1956.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

- (1) This Act may be called the Life Insurance Corporation (Amendment) Act, 2009.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title and
commencement.

31 of 1956.

2. In the Life Insurance Corporation Act, 1956 (hereinafter referred to as the principal Act), for section 5, the following section shall be substituted, namely:—

Substitution
of new
section for
section 5.

"5. The paid-up equity capital of the Corporation shall be one hundred crore of rupees provided by the Central Government after due appropriation made by Parliament by law for the purpose and which may be enhanced to such an amount as the Central Government may, by notification, determine."

Capital of
Corporation.

Amendment
of section 18.

3. In section 18 of the principal Act, sub-section (4) shall be omitted.

Amendment
of section 26.

4. In section 26 of the principal Act, for the words "once at least in every two years", the words "every year" shall be substituted.

Substitution
of new
section for
section 28.

5. For section 28 of the principal Act, the following section shall be substituted, namely:—

Surplus from
life insurance
business, how
to be utilised.

"28. (1) If as a result of any investigation undertaken by the Corporation under section 26, any surplus emerges,—

(a) ninety per cent. or more such surplus, as the Central Government may approve, shall be allocated to or reserved for the life insurance policy-holders of the Corporation;

(b) such percentage of remaining surplus as the Central Government may approve shall be credited to separate account maintained by the Corporation; and

(c) the remainder shall be paid as dividend.

(2) The funds available in the account maintained by the Corporation under clause (b) of sub-section (1) shall be utilised for such purpose and in such manner as the Central Government may determine."

Amendment
of section 37.

6. In section 37 of the principal Act, for the words "by the Central Government", the words "to the extent as the Central Government may, by order, from time to time, determine" shall be substituted.

Amendment
of section 44.

7. In section 44 of the principal Act, clause (b) shall be omitted.

Amendment
of section 48.

8. In section 48 of the principal Act, in sub-section (2), in clause (cc), the words "and agents" at both the places where they occur, shall be omitted.

Amendment
of section 49.

9. In section 49 of the principal Act, in sub-section (2),—

(i) for clause (b), the following clause shall be substituted, namely:—

"(b) the method of recruitment of employees and agents of the Corporation and the terms and conditions of the agents;"

(ii) clause (j) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Life Insurance Corporation Act, 1956 (the LIC Act) nationalised the life insurance business in India by transferring all life insurance business to a Corporation, namely, the Life Insurance Corporation of India (LIC), established for the purpose. This Act also provided for the regulation and control of the business of the LIC. The Insurance Act, 1938, however, remained as the principal law to regulate and exercise supervision over all entities transacting insurance business in India. With the enactment of the Insurance Regulatory and Development Authority Act, 1999, the insurance business was opened up to private sector, as a result of which, in addition to LIC, twenty-one private sector companies have started transacting life insurance business in the country.

2. The Insurance Regulatory and Development Authority (IRDA) while recommending amendments to the Insurance Act, 1938, the Insurance Regulatory and Development Authority Act, 1999 and the General Insurance Business (Nationalisation) Act, 1972 also made recommendations for amending the LIC Act in order to bring this Act in consonance with the Insurance Act, 1938. The Government thereafter also consulted LIC and finalised amendments to LIC Act, 1956.

3. The Life Insurance Corporation (Amendment) Bill, 2008 was introduced on the 22nd December, 2008 in the 14th Lok Sabha which lapsed due to dissolution of the 14th Lok Sabha.

4. The Central Government has decided to introduce the Life Insurance Corporation (Amendment) Bill, 2009, on the lines of the Life Insurance Corporation (Amendment) Bill, 2008 introduced in the 14th Lok Sabha proposing to amend the Life Insurance Corporation Act, 1956, *inter alia*, to—

- (i) provide for raising of minimum capital of the Life Insurance Corporation of India from five crore of rupees to hundred crore of rupees which can further be enhanced to such amount as the Central Government may, by notification, determine;
- (ii) provide sovereign guarantee to the policies of the Life Insurance Corporation to the extent to be determined by order, by the Central Government from time to time;
- (iii) allocate ninety per cent. or more of such surplus, as the Central Government may approve, for the life insurance policy-holders of the Life Insurance Corporation and to credit such percentage of remaining surplus as the Central Government may approve to a separate account maintained by the Life Insurance Corporation, to be utilised for such purpose as the Central Government may determine, and pay the remainder as dividend;
- (iv) empower Life Insurance Corporation to make regulations in respect of terms and conditions of the agents.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 15th July, 2009.

PRANAB MUKHERJEE.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 AND 274 OF THE
CONSTITUTION OF INDIA

[Copy of D.O.No. H. 12018/2/2009-Ins, IV dated the 23rd July, 2009 from Shri Pranab Mukherjee, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Bill Life Insurance Corporation (Amendment) Bill, 2009 recommends under clause (1) of article 117 and clause (1) of article 274 of the Constitution the introduction of the Bill in Lok Sabha.

FINANCIAL MEMORANDUM

Clause 2 of the Life Insurance Corporation (Amendment) Bill, 2009 seeks to raise the minimum capital of the Life Insurance Corporation of India from five crore of rupees to hundred crore of rupees which may be enhanced to such amount as the Central Government may, by notification, determine. The Bill, if enacted, will involve an enhancement of share capital by ninety-five crore of rupees to be provided by the Government of India after due appropriation made by Parliament, by law, for the said purpose.

The provisions of the Bill do not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Life Insurance Corporation (Amendment) Bill, 2009 proposes *inter alia* to amend section 49 of the Life Insurance Corporation Act, 1956 which confers powers upon the Life Insurance Corporation to make regulations under that section providing for the method of recruitment of employees and agents of the Life Insurance Corporation and the terms and conditions of the agents.

2. The regulation made under section 49 of the Life Insurance Corporation Act, 1956, shall be laid, as soon as they are made, before both Houses of Parliament.

3. The matters in respect of which regulations may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. LXIII OF 2009

A Bill to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

AND WHEREAS India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment;

AND WHEREAS decisions were taken at the United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage;

AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution;

AND WHEREAS it is considered expedient to implement the decisions taken at the aforesaid conferences and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to the environment.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and
commencement

1. (1) This Act may be called the National Green Tribunal Act, 2009.

(2) It shall come into force on such date or dates as the Central Government may, by notification, appoint, and different dates may be appointed for different States and any reference in any provision of this Act to the commencement of this Act shall be construed in relation to any State or part thereof as a reference to the coming into force of that provision in that State or part thereof.

Definitions

2. (1) In this Act, unless the context otherwise requires,—

(a) “accident” means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance or equipment, or plant, or vehicle resulting in continuous or intermittent or repeated exposure to death, of, or, injury to, any person or damage to any property or environment but does not include an accident by reason only of war or civil disturbance;

(b) “Chairperson” means the Chairperson of the National Green Tribunal;

(c) “environment” includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;

(d) “Expert Member” means a member of the Tribunal who, is appointed as such, holds qualifications specified in sub-section (2) of section 5, and, is not a Judicial Member;

(e) “handling” in relation to any hazardous substance means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance;

(f) “hazardous substance” means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified or may be specified by the Central Government under the Public Liability Insurance Act, 1991;

29 of 1986.

6 of 1991.

(g) “injury” includes permanent, partial or total disablement or sickness resulting out of an accident;

(h) “Judicial Member” means a member of the Tribunal who is qualified to be appointed as such under sub-section (1) of section 5 and includes the Chairperson;

(i) “notification” means a notification published in the Official Gazette;

(j) “person” includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) trustee of a trust,
- (vii) a local authority, and
- (viii) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (k) "prescribed" means prescribed by rules made under this Act;
- (l) "Schedule" means Schedules I, II and III appended to this Act;
- (m) "substantial question relating to environment" shall include an instance where,—
 - (i) there is a direct violation of a specific statutory environmental obligation by a person by which,—
 - (A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
 - (B) the gravity of damage to the environment or property is substantial; or
 - (C) the damage to public health is broadly measurable;
 - (ii) the environmental consequences relate to a specific activity or a point source of pollution;
- (n) "Tribunal" means the National Green Tribunal established under section 3;
- (o) "workman" has the meaning assigned to it in the Workmen's Compensation Act, 1923.

8 of 1923.

6 of 1974.
 36 of 1977.
 69 of 1980.
 14 of 1981.
 29 of 1986.
 6 of 1991.
 18 of 2003.

(2) The words and expressions used in this Act but not defined herein and defined in the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Cess Act, 1977, the Forest (Conservation) Act, 1980, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability Insurance Act, 1991 and the Biological Diversity Act, 2002 and other Acts relating to environment shall have the meaning, respectively, assigned to them in those Acts.

CHAPTER II

ESTABLISHMENT OF THE TRIBUNAL

3. The Central Government shall, by notification, establish with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Establishment
of Tribunal.

4. (1) The Tribunal shall consist of—

Composition
of Tribunal.

- (a) a full time Chairperson;
- (b) such number of full time Judicial Members as the Central Government may, from time to time, notify;
- (c) such number of full time Expert Members, as the Central Government may, from time to time, notify.

(2) The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.

(3) The Tribunal shall sit at such place or places, as the Central Government may, by notification, specify.

(4) The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal including —

(a) the rules as to the persons who shall be entitled to appear before the Tribunal;

(b) the rules as to the procedure for hearing applications and appeals and other matters pertaining to the applications and appeals;

(c) the minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals.

Qualifications
for
appointment
of
Chairperson,
Judicial
Member and
Expert
Member.

5. (1) A person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court:

Provided that a person who is or has been a Judge of the High Court shall also be qualified to be appointed as a Judicial Member.

(2) A person shall not be qualified for appointment as an Expert Member, unless he,—

(a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or

(b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

(3) The Chairperson, Judicial Member and Expert Member of the Tribunal shall not hold any other office during their tenure as such.

(4) The Chairperson and other Judicial and Expert Members shall not, for a period of one year from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

1 of 1956.

Appointment
of
Chairperson,
Judicial
Member and
Expert
Member

6. (1) Subject to the provisions of section 5, the Chairperson, Judicial Members and Expert Members of the Tribunal shall be appointed by the Central Government.

(2) The Chairperson shall be appointed by the Central Government in consultation with the Chief Justice of India.

(3) The Judicial Members and Expert Members of the Tribunal shall be appointed on the recommendations of such Selection Committee and in such manner as may be prescribed.

Term of
office and
other
conditions of
service of
Chairperson,
Judicial
Member and
Expert
Member

7. The Chairperson, Judicial Member and Expert Member of the Tribunal shall hold office as such for a term of five years from the date on which they enter upon their office, but shall not be eligible for re-appointment:

Provided that in case a person, who is or has been a Judge of the Supreme Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of seventy years:

Provided further that in case a person, who is or has been the Chief Justice of a High Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:

Provided also that in case a person, who is or has been a Judge of a High Court, has been appointed as Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:

Provided also that no Expert Member shall hold office after he has attained the age of sixty-five years.

8. The Chairperson, Judicial Member and Expert Member of the Tribunal may, by notice in writing under their hand addressed to the Central Government, resign their office. Resignation.

9. The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal shall be such as may be prescribed: Salaries, allowances and other terms and conditions of service.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson, Judicial Member and Expert Member shall be varied to their disadvantage after their appointment.

10. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office of the Chairperson or Judicial Member of the Tribunal, who,— Removal and suspension of Chairperson, Judicial Member and Expert Member.

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the Supreme Court under sub-section (2), until the Central Government passes an order on receipt of the report of inquiry made by the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

(5) The Expert Member may be removed from his office by an order of the Central Government on the grounds specified in sub-section (1) and in accordance with the procedure as may be notified by the Central Government:

Provided that the Expert Member shall not be removed unless he has been given an opportunity of being heard in the matter.

11. In the event of the occurrence of any vacancy in the office of the Chairperson of the Tribunal, by reason of his death, resignation or otherwise, such Judicial Member of the Tribunal as the Central Government may, by notification, authorised in this behalf, shall act as the Chairperson until the date on which a new Chairperson is appointed in accordance with the provisions of this Act. To act as Chairperson of Tribunal or to discharge his functions in certain circumstances.

12. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions. Staff of Tribunal.

(2) The recruitment of the officers and other employees of the Tribunal shall be made by the Chairperson in such manner as may be prescribed.

(3) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(4) The salaries and allowances and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

Financial and administrative powers of Chairperson.

13. The Chairperson of the Tribunal shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government:

Provided that the Chairperson may delegate such of his financial and administrative powers, as he may think fit, to any Judicial Member or Expert Member or officer of the Tribunal subject to the condition that the Member or such officer, while exercising such delegated power, continues to act under the direction, control and supervision of the Chairperson.

CHAPTER III

JURISDICTION, POWERS AND PROCEEDINGS OF THE TRIBUNAL

Tribunal to settle disputes.

14. (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

Relief, compensation and restitution.

15. (1) The Tribunal may, by an order, provide,—

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991.

6 of 1991.

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.

16. Any person aggrieved by,—

Tribunal to have appellate jurisdiction.

6 of 1974. (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2009, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974;

6 of 1974. (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2009, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974;

6 of 1974. (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2009, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974;

36 of 1977. (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2009, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977;

69 of 1980. (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2009, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980;

14 of 1981. (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2009, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981;

29 of 1986. (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2009, under section 5 of the Environment (Protection) Act, 1986;

29 of 1986. (h) an order made, on or after the commencement of the National Green Tribunal Act, 2009, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986;

29 of 1986. (i) an order made, on or after the commencement of the National Green Tribunal Act, 2009, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986;

18 of 2003. (j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2009, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002,

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

17. (1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.

Liability to pay relief or compensation in certain cases.

(2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot be

attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operation and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.

Application
or appeal to
Tribunal.

18. (1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by—

- (a) the person, who has sustained the injury; or
- (b) the owner of the property to which the damage has been caused; or
- (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- (d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
- (e) any representative body or organisation functioning in the field of environment, with permission of the Tribunal; or
- (f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 or any other law for the time being in force, with the permission of the Tribunal:

29 of 1968.

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:

Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

Procedure and
powers of
Tribunal

19. (1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

5 of 1908.

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

1 of 1872.

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908

- (a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872. (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(k) any other matter which may be prescribed.

45 of 1860. (5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings
2 of 1974. within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

20. The decision of the Tribunal by majority of members shall be binding.

Decision to be
taken by
majority.

21. Every order of the Tribunal under this Act shall be final.

Finality of
order.

22. (1) While disposing of an application or an appeal under this Act, the Tribunal shall have power to make such order as to costs, as it may consider necessary.

Cost.

(2) Where the Tribunal holds that a claim is not maintainable, or is false or vexatious, and such claim is disallowed, in whole or in part, the Tribunal may, if it so thinks fit, after recording its reasons for holding such claim to be false or vexatious, make an order to award costs, including lost benefits due to any interim injunction.

6 of 1991. 23. (1) Where any amount by way of compensation or relief is ordered to be paid under any award or order made by the Tribunal on the ground of any damage to environment, that amount shall be remitted to the authority specified under sub-section (3) of section 7A of the Public Liability Insurance Act, 1991 for being credited to the Environmental Relief Fund established under that section.

Deposit of
amount
payable for
damage to
environment.

6 of 1991. (2) The amount of compensation or relief credited to the Environmental Relief Fund under sub-section (1), may, notwithstanding anything contained in the Public Liability Insurance Act, 1991, be utilised by such persons or authority, in such manner and for such purposes relating to environment, as may be prescribed.

24. (1) An award or order or decision of the Tribunal under this Act shall be executable by the Tribunal as a decree of a civil court, and for this purpose, the Tribunal shall have all the powers of a civil court.

Execution of
award or order
or decision of
Tribunal.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may transmit any order or award made by it to a civil court having local jurisdiction and such civil court shall execute the order or award as if it were a decree made by that court.

(3) Where the person responsible, for death of, or injury to any person or damage to any property and environment, against whom the award or order is made by the Tribunal, fails to make the payment or deposit the amount as directed by the Tribunal within the period so specified in the award or order, such amount, without prejudice to the filing of complaint for prosecution for an offence under this Act or any other law for the time being in force, shall be recoverable from the aforesaid person as arrears of land revenue or of public demand.

CHAPTER IV

PENALTY

Penalty for failure to comply with orders of Tribunal.

25. (1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention:

Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code. 2 of 1974.

Offences by companies.

26. (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by the company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

27. (1) Where any Department of the Government fails to comply with any order or award or decision of the Tribunal under this Act, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed an offence under this Act and punished accordingly:

Offences by
Government
Department.

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER V

MISCELLANEOUS

28. (1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

Bar of
jurisdiction.

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court.

29. (1) No court shall take cognizance of any offence under this Act except on a complaint made by—

Cognizance of
offences.

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days in such manner as may be prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

(2) No court inferior to that of a Metropolitan Magistrate or, a Judicial Magistrate of the first class shall try any offence punishable under this Act.

30. The Chairperson, the Judicial and Expert Members, officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members and
staff of
Tribunal to be
public
servants.

31. (1) No suit or other legal proceeding shall lie against the employees of the Central Government or a State Government or any statutory authority, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Protection of
action taken in
good faith.

(2) No suit, prosecution or other legal proceeding shall lie against the Chairperson or, Judicial Member or Expert Members of the Tribunal or any other person authorised by the Chairperson or Judicial Member or the Expert Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

32. The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have
overriding
effect.

33. (1) The Central Government may, by notification, amend the Schedule I by including therein any other Act, enacted by Parliament having regard to the objective of environmental protection and conservation of natural resources, or omitting therefrom any Act already specified therein and on the date of publication of such notification, such Act shall be deemed to be included in or, as the case may be, omitted from the Schedule I.

Power to
amend
Schedule I.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Power to
make rules.

34. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) rules as to the persons who shall be entitled to appear before the Tribunal under clause (a) of sub-section (4) of section 4;

(b) the procedure for hearing applications and appeals and other matters pertaining to the applications and appeals under clause (b) of sub-section (4) of section 4;

(c) the minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals under clause (c) of sub-section (4) of section 4;

(d) such selection committee and the manner of appointment of the Judicial Member and Expert Member of the Tribunal under sub-section (3) of section 6;

(e) the salaries and allowances payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal under section 9;

(f) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 10;

(g) the recruitment of officers and other employees of the Tribunal under sub-section (2) of section 12; and the salaries and allowances and other conditions of service of the officers and other employees of the Tribunal under sub-section (4) of that section;

(h) the financial and administrative powers to be exercised by the Chairperson of the Tribunal under section 13;

(i) the form of application or appeal, the particulars which it shall contain and the documents to be accompanied by and the fees payable under sub-section (1) of section 18;

(j) any such matter in respect of which the Tribunal shall have powers of a civil court under clause (k) of sub-section (4) of section 19;

(k) the manner and the purposes for which the amount of compensation or relief credited to the Environment Relief Fund shall be utilised under sub-section (2) of section 23;

(l) the manner of giving notice to make a complaint under clause (b) of sub-section (1) of section 29;

(m) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

(3) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the

successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

35. The enactments specified in the Schedule III to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Tribunal.

Amendment
of certain
enactments.

36. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

27 of 1995.
22 of 1997.

37. (1) The National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 are hereby repealed (hereinafter referred to as the repealed Act).

Repeal and
savings.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

22 of 1997. (3) The National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, shall, on the establishment of the National Green Tribunal under the National Green Tribunal Act, 2009, stand dissolved.

22 of 1997. (4) On the dissolution of the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, the persons appointed as the Chairperson, Vice-chairperson and every other person appointed as Member of the said National Environment Appellate Authority and holding office as such immediately before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2009, shall vacate their respective offices and no such Chairperson, Vice-chairperson and every other person appointed as Member shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

22 of 1997. (5) All cases pending before the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997 on or before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2009, shall, on such establishment, stand transferred to the said National Green Tribunal and the National Green Tribunal shall dispose of such cases as if they were cases filed under that Act.

(6) The officers or other employees who have been, immediately before the dissolution of the National Environment Appellate Authority appointed on deputation basis to the National Environment Appellate Authority, shall, on such dissolution, stand reverted to their parent cadre, Ministry or Department, as the case may be.

(7) On the dissolution of the National Environment Appellate Authority, the officers and other employees appointed on contract basis under the National Environment Appellate Authority and holding office as such immediately before such dissolution, shall vacate their respective offices and such officers and other employees shall be entitled to claim compensation for three months' pay and allowances or pay and allowances for the

remaining period of service, whichever is less, for the premature termination of term of their office under their contract of service.

(8) The mention of the particular matters referred to in sub-sections (2) to (7) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

10 of 1897.

SCHEDULE I

[See sections 14(1), 15(1) (a), 17(1), 17(2), 19(4) (j) and 33(1)]

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002.

SCHEDULE II

[See sections 15(4) and 17(1)]

HEADS UNDER WHICH COMPENSATION OR RELIEF FOR DAMAGE MAY BE CLAIMED

- (a) Death;
- (b) Permanent, temporary, total or partial disability or other injury or sickness;
- (c) Loss of wages due to total or partial disability or permanent or temporary disability;
- (d) Medical expenses incurred for treatment of injuries or sickness;
- (e) Damages to private property;
- (f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;
- (g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;
- (h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;
- (i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;
- (j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;
- (k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;
- (l) Loss and destruction of any property other than private property;
- (m) Loss of business or employment or both;
- (n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance.

SCHEDULE III
(See section 35)

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

(6 OF 1974)

After section 33A, the following section shall be inserted, namely:—

Insertion of
new section
33B.

“33B. Any person aggrieved by,—

Appeal to
National
Green
Tribunal.

(a) an order or decision of the appellate authority under section 28,
made on or after the commencement of the National Green Tribunal Act, 2009;
or

(b) an order passed by the State Government under section 29, on or after
the commencement of the National Green Tribunal Act, 2009; or

(c) directions issued under section 33A by a Board, on or after the
commencement of the National Green Tribunal Act, 2009,

may file an appeal to the National Green Tribunal established under section 3 of the
National Green Tribunal Act, 2009, in accordance with the provisions of that Act.”

PART II

AMENDMENTS TO THE WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT, 1977

(36 OF 1977)

1. In section 13, in sub-section (4), for the words “shall be final”, the words, figures and
letters “shall, if no appeal has been filed under section 13A, be final” shall be substituted.

Amendment of
section 13.

2. After section 13, the following section shall be inserted, namely:—

Insertion of
new section
13A.

“13A. Any person aggrieved, by an order or decision of the appellate authority
made under section 13, on or after the commencement of the National Green Tribunal
Act, 2009, may file an appeal to the National Green Tribunal established under section 3
of the National Green Tribunal Act, 2009, in accordance with the provisions of that Act.”

Appeal to
National
Green
Tribunal.

PART III

AMENDMENT TO THE FOREST (CONSERVATION) ACT, 1980

(69 OF 1980)

After section 2, the following section shall be inserted, namely:—

Insertion of
new section
2A.

“2A. Any person aggrieved, by an order or decision of the State Government or
other authority made under section 2, on or after the commencement of the National
Green Tribunal Act, 2009, may file an appeal to the National Green Tribunal established
under section 3 of the National Green Tribunal Act, 2009, in accordance with the
provisions of that Act.”

Appeal to
National Green
Tribunal.

PART IV

AMENDMENT TO THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

(14 OF 1981)

Insertion of
new section
31B.

Appeal to
National Green
Tribunal

After section 31A, the following section shall be inserted, namely:—

“31B. Any person aggrieved by an order or decision of the Appellate Authority under section 31, made on or after the commencement of the National Green Tribunal Act, 2009, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2009, in accordance with the provisions of that Act.”.

PART V

AMENDMENT TO THE ENVIRONMENT (PROTECTION) ACT, 1986

(29 OF 1986)

Insertion of
new section
5A.

Appeal to
National Green
Tribunal

After section 5, the following section shall be inserted, namely:—

“5A. Any person aggrieved by any directions issued under section 5, on or after the commencement of the National Green Tribunal Act, 2009, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2009, in accordance with the provisions of that Act.”.

PART VI

AMENDMENTS TO THE BIOLOGICAL DIVERSITY ACT, 2002

(18 OF 2003)

Amendment
of section 52.

1. In section 52, after the proviso, the following provisos shall be inserted, namely:—

“Provided further that nothing contained in this section shall apply on and from the commencement of the National Green Tribunal Act, 2009:

Provided also that any appeal pending before the High Court. before the commencement of the National Green Tribunal Act, 2009, shall continue to be heard and disposed of by the High Court as if the National Green Tribunal had not been established under section 3 of the National Green Tribunal Act, 2009.”.

Insertion of
new section
52A

Appeal to
National Green
Tribunal.

2. After section 52, the following section shall be inserted, namely:—

“52A. Any person aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, on or after the commencement of the National Green Tribunal Act, 2009, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2009, in accordance with the provisions of that Act.”.

STATEMENT OF OBJECTS AND REASONS

The rapid expansion in industrial, infrastructure and transportation sectors and increasing urbanisation in recent years have given rise to new pressures on our natural resources and environment. There is a commensurate increase in environment related litigation pending in various courts and other authorities. The risk to human health and environment arising out of hazardous activities has also become a matter of concern.

2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialised environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialised tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

7. Accordingly, it has been decided to introduce the National Green Tribunal Bill, 2009 which *inter alia* provides—

(a) for establishment of a National Green Tribunal which shall consist of a Chairperson and such number of Judicial and Expert Members as the Central Government may notify;

(b) that a person who is or has been a Judge of the Supreme Court or a Chief Justice of a High Court shall be eligible for appointment as the Chairperson or Judicial Member of the Tribunal;

(c) that a person who is or has been a Judge of a High Court shall also be eligible for appointment as a Judicial Member;

(d) that a person who is either an expert in physical sciences or life sciences or engineering, or who has administrative experience in dealing with environmental matters shall be qualified for appointment as an Expert Member;

(e) that the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in the Schedule I to the Bill and to grant relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I to the Bill and to hear appeals under certain enactments specified in the Schedule III to the Bill;

(f) for repeal of the 'National Environmental Tribunal Act, 1995' and the 'National Environment Appellate Authority Act, 1997'.

8. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;
The 29th July, 2009.

JAIRAM RAMESH

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter F. No. 1(18)/2003-PL dated the 29th July, 2009 from Shri Jairam Ramesh, Minister of State for Environment and Forests to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed National Green Tribunal Bill, 2009, recommends the introduction and consideration of the Bill in Lok Sabha under clauses (1) and (3) of article 117 of the Constitution.

Notes on clauses

Clause 2.— This clause defines various expressions used in the Bill. It *inter alia* defines expressions “accident”, “Chairperson”, “environment”, “Expert Member”, “hazardous substance”, “injury”, “Judicial Member”, “person”, “substantial question relating to environment”, “Tribunal” and “workman” used in the Bill.

Clause 3.— This clause provides for the establishment of a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the proposed legislation.

Clause 4.— This clause specifies the composition of the Tribunal. The Tribunal shall consist of a full-time Chairperson, such number of full-time Judicial Members and Expert Members as the Central Government may, from time to time, notify. Sub-clause (2) provides that the Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case. Sub-clause (3) provides that the Tribunal shall sit at such place or places as the Central Government may, by notification, specify. Sub-clause (4) empowers the Central Government to make rules in consultation with the Chairperson of the Tribunal regulating generally the practices and procedure of the Tribunal including rules as to the persons who shall be entitled to appear before the Tribunal, the procedure for hearing applications and appeals and other matters pertaining to the applications and appeals, and the minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals.

Clause 5.— This clause specifies the qualifications for appointment of Chairperson, Judicial Member and Expert Member. It provides that a person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court and a person who is or has been a Judge of High Court shall also be qualified to be appointed as a Judicial Member and a person shall not be qualified for appointment as an Expert Member, unless he has a degree in Master of Science in Physical Sciences or Life Sciences with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed national level institution, or has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution. Sub-clause (3) provides that no Chairperson Judicial Member and Expert Member shall hold any other office during his tenure. Sub-clause (4) restricts the member from accepting any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal under this Act after they cease to hold office, for a period of one year.

Clause 6.— This clause provides for manner of appointment of the Chairperson, Judicial Member and Expert Member. It provides that the Chairperson shall be appointed by the Central Government in consultation with the Chief Justice of India and the Judicial Members and Expert Members of the Tribunal shall be appointed on the recommendations of the Selection Committee in such manner as may be prescribed.

Clause 7.— This clause provides that the Chairperson, Judicial Member and Expert Member of the Tribunal shall hold office as such for a term of five years from the date on which they enter upon their office, but shall not be eligible for re-appointment. It also provides Expert Members of the Tribunal shall hold office as such for a term of five years from the date

on which they enter upon their office, but shall not be eligible for re-appointment. It also provides that if a person who is or has been a Judge of the Supreme Court is appointed as the Chairperson, he shall hold office as such till he attains the age of seventy years, and in case a person who is or has been Chief Justice of a High Court is appointed as the Chairperson or Judicial Member, he shall hold office as such till the age of sixty-seven years. In case a person who is or has been a Judge of a High Court is appointed as a Judicial Member, he shall hold office as such till the age of sixty-seven years. The Expert Member shall not hold office after he has attained the age of sixty five years.

Clause 8.—This clause makes provision for resignation by the Chairperson, Judicial Member and Expert Member. It provides that the Chairperson, Judicial Member and Expert Member of the Tribunal may, by notice in writing under their hand addressed to the Central Government, resign their office.

Clause 9.—This clause provides that salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal shall be such as may be prescribed. It also provides that the salary and allowances or the other terms and conditions of service of the Chairperson, Judicial Member and Expert Member shall not be varied to their disadvantage after their appointment.

Clause 10.—This clause lays down the provisions for removal and suspension of Chairperson, Judicial Member and Expert Member. Sub-clause (1) provides that the Central Government may, in consultation with the Chief Justice of India, remove from office of the Chairperson or Judicial Member of the Tribunal, who, has been adjudged an insolvent; or has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or has become physically or mentally incapable; or has acquired such financial or other interest as is likely to affect prejudicially his functions; or has so abused his position as to render his continuance in office prejudicial to the public interest. It further provides that Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. It also empowers the Central Government to suspend the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made. It also empowers the Central Government to regulate the procedure for inquiry referred to in sub-clause (2) thereof. It also provides that the Expert Member may be removed from his office by an order of the Central Government on the grounds specified in sub-section (1) after providing him an opportunity of being heard in the matter in accordance with the procedure as may be notified by the Central Government.

Clause 11.—This clause empowers the Central Government to authorise any Judicial Member of the Tribunal to act as the Chairperson in the event of the occurrence of any vacancy in the office of the Chairperson of the Tribunal by reason of his death, resignation or otherwise.

Clause 12.—This clause empowers the Central Government to appoint such officers and other employees as may be necessary for efficient functioning of the Tribunal under the proposed legislation. It also provides that the officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Tribunal. The Central Government is also empowered to make rules providing for laying down the detailed terms and other conditions of service of its officers and employees.

Clause 13.—This clause empowers the Chairperson of the Tribunal to exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government. It further empowers the Chairperson to delegate such of his financial and administrative powers, as he may think fit, to any Judicial Member or Expert Member or officer of the Tribunal subject to the condition that the Member or such officer, while exercising such delegated power, continues to act under the direction, control and supervision of the Chairperson.

Clause 14.—This clause confers on the Tribunal, the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I to the Bill. It further provides a time-limit of six months within which the applications for adjudication of dispute under this section shall be entertained by the Tribunal. It also empowers the Tribunal to allow such applications to be filed within a further period not exceeding sixty days, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period.

Clause 15.—This clause empowers the Tribunal to provide for the relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance), or for restitution of property damaged; or for restitution of the environment for such area or areas. Sub-clause (2) provides that the relief and compensation and restitution of property and environment referred to in sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991. Sub-clause (3) provides a time-limit of five years within which the applications for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal. It also empowers the Tribunal to allow such applications to be filed within a further period not exceeding sixty days, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period. Sub-clause (4) provides that the Tribunal may, having regard to the damage to public health, property and environment, divide the compensation payable under separate heads mentioned in Schedule II so as to provide relief to the claimants and for restitution of the damaged property or environment, as it may think fit. Sub-clause (5) imposes a duty on claimant to the Tribunal to intimate about the application filed to, or, as the case may be, relief received from, any other court or authority.

Clause 16.—This clause confers upon the Tribunal the appellate jurisdiction against certain orders or decisions or directions under the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Forest (Conservation) Act, 1980; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986 and the Biological Diversity Act, 2002, as specified in the aforesaid clause and Schedule III to the Bill.

It further provides a time-limit of thirty days within which the appeals may be filed before the Tribunal. It also empowers the Tribunal to allow such appeals to be filed within a further period not exceeding sixty days, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period.

Clause 17.—This clause makes provision relating to liability to pay relief or compensation in certain cases. It provides that the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II to the Bill, as may be determined by the Tribunal in case where death or injury to any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment mentioned in Schedule I to the Bill. It further empowers the Tribunal that in cases where such death or injury or damage cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operation and processes, the Tribunal may, apportion the liability for compensation amongst those responsible for such activities, operations and processes on an equitable basis.

Clause 18.—This clause provides that each application under clauses 14 and 15 or appeal under clause 16 made to the Tribunal shall be in such form, contain such particulars and shall be accompanied by such documents and such fees as may be prescribed. It further provides that an application for grant of relief or compensation or settlement of dispute may, without prejudice to the provisions contained in clause 16 of the Bill be made to the Tribunal by certain persons specified in said clause 18 or by the Central Government or a State

Government or a Union Territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a Local Authority or any environmental authority constituted or established under the Environment Protection Act, 1986 or any other law for the time being in force, with the permission of the Tribunal.

It also provides that application and appeals shall be dealt with by the Tribunal as expeditiously as possible and endeavour shall be made to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of its filing, after providing the parties concerned an opportunity to be heard.

Clause 19.—This clause lays down the procedure and powers of the Tribunal. It provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. It further provides that subject to the provisions of the Bill, the Tribunal shall have power to regulate its own procedure. It also provides that the Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 and for the purposes of discharging its functions under the proposed legislation, the Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the matters enumerated in sub-clause (4). It also provides all proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code and that the Tribunal shall be deemed to be a civil court for the purposes of sections 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Clause 20.—This clause provides that the decision of the Tribunal taken by majority of members shall be binding.

Clause 21.—This clause provides finality of the order of the Tribunal made under the Bill.

Clause 22.—This clause empowers the Tribunal to make an order for costs as it may consider necessary. It provides that where the Tribunal holds that a claim is not maintainable or is false or vexatious, and such claim is disallowed, in whole or part, the Tribunal may, if so thinks fit, after recording its reasons for holding such claim to be false or vexatious, make an order to award costs, including lost benefits due to any interim injunction.

Clause 23.—This clause provides that where any amount by way of compensation or relief is ordered to be paid under any award or order made by the Tribunal on the ground of any damage to environment, that amount shall be remitted to the authority specified under sub-section (3) of section 7A of the Public Liability Insurance Act, 1991 and shall be credited to the Environmental Relief Fund established under that section and such amount may, notwithstanding anything contained in the Public Liability Insurance Act, 1991, be utilised by such persons or authority, in such manner and for such purposes relating to environment, as may be prescribed.

Clause 24.—This clause lays down the procedure for execution of award or order of the Tribunal. It provides that an award or order or decision of the Tribunal shall be executable by the Tribunal as a decree of a civil court, and for this purpose, the Tribunal shall have all the powers of a civil court. It further empowers the Tribunal that it may transmit the award or order to the civil court having jurisdiction over the area in which the environmental damage or accident has occurred, and shall execute the award or order as if it were made by that court. It also provides that if a person fails to make the payment or deposit the amount as directed by the Tribunal within the period so specified in the award or order, such amount, without prejudice to the filing of complaint for prosecution for an offence under the proposed legislation or any other law for the time being in force shall be recoverable from the aforesaid person as arrears of land revenue or of public demand.

Clause 25.—This clause provides for penalty for failure to comply with the orders of the Tribunal. It provides that whoever, fails to comply with any order or award or decision

of the Tribunal, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

It further provides that in case a company, fails to comply with any order or award or decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

It also provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under the Bill shall be deemed to be non-cognizable within the meaning of the said Code.

Clause 26.—This clause contains provisions relating to offences by companies. It provides that where any offence under the proposed legislation has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. It further provides that if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, he shall not be liable to any punishment. It also provides that if any offence has been committed by company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Clause 27.— This clause contains provision relating to offences by the Government Departments. It provides that where any Department of the Government fails to comply with any order or award or decision of the Tribunal, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed the offence under the proposed legislation and punished accordingly. It further provides that if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, he shall not be liable to any punishment.

It also provides that if any offence has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Clause 28.— This clause provides bar of jurisdiction on civil courts. It provides that from the date of establishment of the Tribunal, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

It further provides that no civil court shall have jurisdiction to settle or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment which may be adjudicated upon by the Tribunal and no injunction in respect of any action taken or to be taken by or before the Tribunal shall be granted by civil court.

Clause 29.— This clause provides that the court shall not take cognizance of any offence under the proposed legislation except on a complaint made by the Central Government or any authority or officer authorised in this behalf by that Government; or

any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid. It further provides that any court inferior to that of a Metropolitan Magistrate or, a Judicial Magistrate of the first class shall not try any offence punishable under the proposed legislation.

Clause 30.— This clause provides that the Chairperson, the Judicial and Expert Members, officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 31.— This clause make provision for protection of action taken in good faith. It provides that no suit or other legal proceeding shall lie against the Chairperson or Judicial Member or Expert Members of the Tribunal or any other person authorised by the Chairperson or Judicial Member or the Expert Member or the employees of the Central Government or a State Government or any statutory authority, for anything which is in good faith done or intended to be done in pursuance of the proposed legislation or any rule or order made thereunder.

Clause 32.— This clause gives overriding effect to the provision of the proposed legislation over other laws. It provides that the provisions of the Bill shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the proposed legislation.

Clause 33.— This clause empowers the Central Government to amend the Schedule I by including therein any other Act, enacted by Parliament having regard to the objective of environmental protection and conservation of natural resources, or omitting therefrom any Act already specified therein and on the date of publication of such notification, such Act shall be deemed to be included in or, as the case may be, omitted from the Schedule I.

It further provides that a copy of every notification proposed to be issued under sub-clause (1), shall be laid in draft before each House of Parliament for its approval.

Clause 34.— This clause empowers the Central Government to make rules, by notification in the Official Gazette, for carrying out the provisions of the Bill. It further enumerates the matters for which the Central Government may make rules. It also provides that every rule made by the Central Government shall be laid before each House of Parliament.

Clause 35.— This clause makes certain amendments to the enactments specified in the Schedule III to the Bill in the manner specified therein. It further provides that such amendments shall take effect on the date of establishment of the Tribunal.

Clause 36.— This clause provides for provisions for removal of difficulties. It provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government, may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of the proposed legislation as may appear to it to be necessary for removing the difficulty. It further provides that such order shall be made within a period of two years from the commencement of the proposed legislation. It also provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 37.— This clause provides for repeal of the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997. It further provides that notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the proposed legislation.

It also provides that the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, on the establishment of the National Green Tribunal under the National Green Tribunal Act, 2009, shall stand dissolved and all cases pending before it shall be transferred to the National Green Tribunal.

It also makes detailed provisions relating to the vacation of office by the Chairperson, Vice-chairperson and every other person appointed as Member of the said National Environment Appellate Authority and transfer and reversion of officers and employees of the said National Environment Appellate Tribunal to their parent cadre or Ministry or Department.

Schedule I specifies the seven enactments under which the Tribunal shall have jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved in relation to settlement of disputes, or award of relief or compensation, etc.

Schedule II specifies the heads under which relief or compensation for environmental damage may be claimed under the provision of the Bill.

Schedule III provides for making certain amendments to the enactments specified therein.

FINANCIAL MEMORANDUM

Clause 3 of the Bill relates to the establishment of the National Green Tribunal. Under sub-clause (3) of Clause 4, the Tribunal shall sit at such place or places, as the Central Government may, by notification, specify. It is proposed that the Central Government shall bear the expenditure on setting up of the Tribunal. The annual recurring and initial non-recurring expenditure on the setting up of the Tribunal and its sitting at five places is estimated to be Rs. 18.84 crore and Rs. 1.88 crore respectively.

2. The Central Government already has the legal mandate for expenditure towards setting up of a National Environment Tribunal and its benches under the National Environment Tribunal Act, 1995, an Act which is to be repealed in view of the proposed Bill. In addition, the proposed repeal of the National Environment Appellate Authority Act, 1997 and the winding up of the existing Authority will also offset, to an extent, the financial liability involved in the setting up of the proposed Tribunal.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 34 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the matters in respect of which such rules may be made. These matters, *inter alia*, include matters (a) rules as to the persons who shall be entitled to appear before the Tribunal under clause (a) of sub-section (4) of section 4; (b) the procedure for hearing applications and appeals and other matters pertaining to the applications and appeals under clause (b) of sub-section (4) of section 4; (c) the minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals under clause (c) of sub-section (4) of section 4; (d) the Selection Committee and the manner of appointment of the Judicial Member and Expert Member of the Tribunal under sub-section (3) of section 6; (e) the salaries and allowances payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal under section 9; (f) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 10; (g) the recruitment of officers and other employees of the Tribunal under sub-section (2) of section 12; and the salaries and allowances and other conditions of service of the officers and other employees of the Tribunal under sub-section (4) of that section; (h) the financial and administrative powers to be exercised by the Chairperson of the Tribunal under section 13; (i) the form of application or appeal, particulars which it shall contain and the documents to be accompanied by and the fees payable under sub-section (1) of section 18; (j) any such matter in respect of which the Tribunal shall have powers of a civil court under clause (k) of sub-section (4) of section 19; (k) the manner and the purposes for which the amount of relief and compensation credited to the Environment Relief Fund shall be utilised under sub-section (2) of section 23; (l) the manner of giving notice to make a complaint under clause (b) of sub-section (1) of section 29; (m) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

2. The rules made under clause 34 of the Bill, shall be laid, as soon as they are made, before both the Houses of Parliament.

3. The matters in respect of which rules may be made are matter of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers, therefore, is of a normal character.

P. D. T. ACHARY,
Secretary-General.